S.B.CRI.MISC.APLN. FOR SUSPENSION OF SENTENCE NO.72/2007
[SHANKER LAL vs. STATE]
IN
S.B. CRIMINAL APPEAL NO.40/2007

S.B.CRI.MISC.APLN. FOR SUSPENSION OF SENTENCE NO.73/2007
[SHUBHASH CHANDRA vs. STATE]
IN
S.B. CRIMINAL APPEAL NO.41/2007
DATE OF ORDER :30.05.2007

HON'BLE MR.CHATRA RAM JAT, J.

Mr.B.S.Rathore}
Mr.M.L.Bishnoi} for the appellants;
Mr.J.P.S.Choudhary, P.P.

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Both the bail applications under Section 389 Cr.P.C. are heard together and are being disposed of by this common order.

Heard learned counsel for the appellants and learned P.P. on the application under Section 389, Cr.P.C. for suspension of sentence and perused the record and judgment of the trial court.

Learned counsel for the appellant Shanker Lal states that the case of Shanker Lal is distinguishable from co-accused because he was not a driver and he was the only Khalasi. Learned counsel for the appellants Shanker Lal and Subhash states that they are in custody from 15.08.2004. Learned counsel further states that on conjointly reading of

statements of P.W. 4 Murlidhar, P.W. 6 Kishan Lal, P.W. 7 Raghunath and P.W. 8 Birbal Ram and Ex.P-19 and Ex.D-5 it is clear that there is no memo for the samples for the seal and the samples were not reached intact in FSL. Learned counsel further states that there is a major contradiction for the date on which samples were received i.e. on 25.08.2004 or 26.08.2004 and he has placed reliance in the matter of Rajesh Jagdamba Avasthi Vs. State of Goa reported in [2006] 1 SCC [Cri] 150. The discrepancy goes to the root of the case and this is a strong arguable ground and hearing of appeal will take long time, therefore, the sentence of the accused appellants should be suspended.

Learned Public Prosecutor vehemently opposed this application seeking suspension of sentence on the ground that 69 bags containing 3045 kg and 500 gms doda post and as per description of packets mentioned in the FSL report Ex.P-18 i.e. 69 in numbers marked as 1/1 to 69/1 was found separately packed with properly sealed bearing impressions which tallied with specimen seal impressions and seals were intact. Learned P.P further states that against this report there is no evidence on the defence side and the case of Rajesh Jagdamba Avasthi [Supra] is distinguishable because as per the facts of the case samples from envelope B was of 115 gms is said to have been packed and sealed and the

quantity found was only 82.54 gms. Thus approximately material shortening of 33 gms. because of discrepancy the prosecution evidence was not relied on but this is not the case in hand. Lastly, he prays that looking to the recovery of heavy quantity of recovered contraband and looking to the gravity of offence the sentence of the accused appellants should not be suspended and the application under Section 389 Cr.P.C. deserves to be rejected.

I have considered the submissions advanced by the learned counsel for the parties and also gone through the record of the case/judgment impugned. Looking to all the facts and circumstances of the case and taking into account the submission of the learned counsel for the appellant that accused appellants and looking to the quantity of recovered contraband without commenting on the merit of the case and without expressing any opinion on the merit of the case I do not deem it a fit case in which sentence of the accused appellants be suspended.

Accordingly, the applications under Section 389 Cr.P.C. having no force is hereby dismissed.

[CHATRA RAM JAT],J.